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Examiner: Andrew W. Chriss

### REMARKS

The Examiner rejected claim 1 (the only independent claim) under 35 U.S.C. § 103(a) in the August 4, 2009 non-final office action as being unpatentable over U.S. Patent No. 7,061,876 ("Ambe") in view of United States Patent Application No. 2003/0223358 ("Rigby") and further in view of U.S. Patent Publication No. 2001/0048660 ("Saleh").

Amended claim 1 distinguishes over the Ambe, Rigby and Saleh references because it claims "receiving a packet, wherein the packet comprises a route indicator field further comprising at least one bit that indicates a link type" and "responsive to the packet being received after a time of failure along a communication link between two of a plurality of nodes and in response to an automatic change of state of the at least one bit that indicates the link type in the route indicator field, transmitting the packet along a second route in the system to another node in the plurality of the nodes"-features not disclosed in any cited reference.

In describing these limitations involving a route indicator field, the application states in relevant part:

Figure 2 illustrates a packet format 20 according to a preferred embodiment and for use in connection with system 10 of Figure 1a. Packet format 20 includes various fields as known in the Ethernet art, and only some of which are shown by way of example. These fields include a source address field 20<sub>1</sub>, a destination address field 20<sub>2</sub>, a length field 20<sub>3</sub> and a data payload field 20<sub>4</sub>. Other fields, although not shown, may be included as also known in the art, such as a preamble and a packet (or frame) start field. According to the preferred embodiment, however, packet format 20

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includes an additional field 20<sub>s</sub>, referred to hereafter as a link type field 20<sub>s</sub>. Link type field 20<sub>s</sub> is so named because, as shown below, the state of the field indicates the type of link on to which the packet is routed, with one state in field 20<sub>s</sub> (e.g., 0) indicating a spanning tree link and another state in field 20<sub>s</sub> (e.g., 1) indicating a bypass link along system 10. In the preferred embodiment, link type field 20<sub>s</sub> is a one-bit field and it is contemplated that it could be a bit provided as an addition to existing Ethernet frames or, alternatively, it could be a bit that is already in the Ethernet frame yet where the function of that bit is changed to be consistent with the functionality described in this document as relating to link type field 20<sub>s</sub>.

See Patent Application, p. 9. The Application further states:

When a failure occurs in a link in system 10, that failure is detected according to known protocols. However, as an enhancement in a preferred embodiment, in response to the failure detection, a node within system 10 changes the state of link type field 20<sub>s</sub> so that each packet so changed will be routed along a bypass link, where recall by way of example that a binary value of 1 in link type field 20<sub>s</sub> causes this effect. Further, when a node within system 10 receives a packet with a binary value of 1 in its link type field 20<sub>s</sub>, the receiving node does not consult its forwarding table for purposes of further routing the received packet, but instead it consults its bypass table to determine the next route for the received packet.

See Patent Application, p. 11. The route indicator field is further defined by Applicant as follows:

In system 10, the route indicator field is a link type field 20<sub>s</sub>, operable to indicate that the packet is to continue along a spanning tree route or a bypass route. In system 10', the route indicator field is a link set field 20'<sub>s</sub>, operable to indicate that the packet is to continue along a first set of links

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forming a first route, a second set of links forming a second route, and so forth for up to  $2^M$  sets of links corresponding to a respective number of  $2^M$  routes.

See Patent Application, p. 26. Examiner cites Saleh as disclosing a "failed path field" that is equivalent in structure and function to Applicant's link type field. (See Saleh, paragraph 0054 and FIG. 3D, 385)

FIG. 3D of Saleh shows a 16 bit failed path field 385 as part of a Restore\_I packet. The cited paragraph of Saleh discloses, "[t]he failed path field (385) indicates whether the path is the Primary or Secondary path for CoS-3. For all other types of VPs, this field indicates that failed path is the primary path for failed VP."

The structure and use of this "failed path field" is not the equivalent of changing the state of the route indicator field by changing the value in the link type field or a packet. There is no automatic change of state of the link type field in a packet disclosed in Saleh. Instead, a separate Restore\_I packet is sent which contains the "failed path field" along with other fields. Applicant made this same argument in response to the January 22, 2009 final office action.

In the August 4, 2009 non-final office action, Examiner states that "USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure." See August 4, 2009 Office Action, p. 11. Examiner concludes that in following this directive, he must conclude that Saleh's "failed path field" is the

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equivalent of a "route indicator field compris[ing] at least one bit that indicates a link type" of the present independent claim 1.

However, Examiner notes that the claim language of independent claim 1, did not include a limitation related to the "automatic change of state of the at least one bit that indicates link type in a packet" which he appears to concede is a limitation not disclosed in Saleh for rerouting of a packet. Claim 1 has been amended accordingly.

Applicant respectfully requests the Examiner withdraw the rejection and allow pending amended Claim 1. In addition, all claims depending from amended Claim 1 either directly or indirectly, including Claims 2-20, are also allowable for the reasons discussed in conjunction with amended Claim 1.

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**CONCLUSION**

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims. If there are any matters that can be discussed by telephone to further the prosecution of this Application, Applicant invites the Examiner to contact the undersigned attorney at 512-306-8533 at the Examiner's convenience.

Respectfully submitted,

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